

General Information Letter: Material Advisor ordered by IRS to turn over some investor information and to retain remainder pending IRS request need not turn over retained information to the Department until requested by the IRS or the Department.

July 10, 2006

Dear:

This is in response to your email dated June 28, 2006, in which you request a letter ruling. The nature of your request and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at [www. tax.illinois.gov](http://www.tax.illinois.gov).

In your email you have stated the following:

We ask that the Department allow my client, COMPANY LP ("COMPANY"), to fulfill its Illinois investor list reporting obligation under Section 1405.6 of the Illinois Income Tax Act in the same manner being permitted by the Internal Revenue Service ("IRS"), as described in more detail below and in the attachments to this email.

COMPANY is a "material advisor." In a letter dated June 5, 2006 (the "IRS List Request"), the IRS requested that COMPANY produce every "list" that COMPANY is obligated to keep under IRC Section 6112. Treas. Reg. Section 301.6112-1T(e)(3)(i)(I) and its successor provisions state that a transaction that a "list" for this purpose includes "[c]opies of any additional written materials . . . relating to each transaction that have been shown or provided to any person who acquired or may acquire an interest in the transactions, or to their representatives, tax advisors, or agents, by the material advisor or any related party or agent of the material advisor."

COMPANY raised with the IRS the immense burden entailed in complying with Treas. Reg. Section 301.6112-1T(e)(3)(i)(I). As a result of that discussion, the IRS wrote COMPANY another letter, dated June 8, 2006 (the "List Contents Timing Agreement"), in which the IRS stated that COMPANY must provide everything else required by Section 6112, but need not provide the ancillary material required by Treas. Reg. Section 301.6112-1T(e)(3)(i)(I). Instead, the IRS agreed to review the other information first and then inform COMPANY whether, and to what extent, it would request information pertaining to Treas. Reg. Section 301.6112-1T(e)(3)(i)(I).

The IRS List Request and the List Contents Timing Agreement are attached. (We note that, the June 30 date referred to in Paragraph 1 of the List Timing Contents Agreement is in error and should read July 3, 2006. The IRS confirmed this by telephone on June 12, 2006. We also note that the List Contents Timing Agreement refers to Section 301.6112-1T(e)(3)(i) of the Temporary Treasury Regulations promulgated under Section 6112 of the IRC, instead of the currently applicable final regulation, Section 301.6112-1(e)(3)(i).)

You asked about California's view in this matter. As I understand it Section 18648 of the California Revenue and Taxation Code does not require a material advisor to

furnish lists to California simply because it receives a request for such lists from the IRS. Instead, a material advisor need only furnish lists to California within 20 business days after a request from the Franchise Tax Board (COMPANY has confirmed this with the legal staff of the Franchise Tax Board) or, if the transaction is or becomes a listed transaction, by the later of (1) 60 days after entering into the transaction or (2) 60 days after the transaction becomes a listed transaction. In other words, California does not require COMPANY to file anything in response to the IRS List Request.

In light of the above, COMPANY respectfully request your written confirmation that COMPANY will be treated as having timely complied with Section 1405.6, and, accordingly, that no penalty will be imposed under Section 1007, as long as COMPANY (1) submits to Illinois by July 3, 2006 the same information it is required to provide the IRS pursuant to the IRS List Request, as modified by the List Contents Timing Agreement, and (2) provides to the Illinois Department of Revenue any and all documents pertaining to Treas. Reg. Section 301.6112-1T(e)(3)(i)(I) subsequently requested by either the IRS or the Illinois Department of Revenue at such time and in such manner as required by the respective taxing authority.

Response

Section 1405.6(a) of the Illinois Income Tax Act (35 ILCS 5/1405.6) provides:

Any person required to maintain a list under Section 6112 of the Internal Revenue Code and Treasury Regulations Section 301.6112-1 with respect to a potentially abusive tax shelter shall furnish such list to the Department not later than the time such list is required to be furnished to the Internal Revenue Service under federal income tax law. The list required under this Section shall include the same information required with respect to a potentially abusive tax shelter under Treasury Regulations Section 301.6112-1 and any other information as the Department may require.

Section 1007 of the Illinois Income Tax Act (35 ILCS 5/1007) imposes penalties for failure to comply with the requirements of Section 1405.6. Section 1007(c) provides that the Director of the Department of Revenue may abate any penalty otherwise due under that section if:

- (4) Imposing the penalty would be against equity and good conscience;
- (5) Rescinding the penalty would promote compliance with the requirements of this Act and effective tax administration; or
- (6) The taxpayer can show that there was reasonable cause for the failure to disclose and that the taxpayer acted in good faith.

Under these provisions, we agree that any penalty that might otherwise be imposed on COMPANY LP for failure to furnish, as required by Section 1405.6, any information shall be abated if, under the List Contents Timing Agreement, the Internal Revenue Service has agreed such information need not currently be furnished to the Internal Revenue Service and if such information is furnished to the

Department no later than the date on which the Internal Revenue Service requires such information to be furnished to it or the date on which the Department requires in writing that such information to be furnished to it, whichever is earlier.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b). If you have any further questions, you may contact me at (217) 782-7055.

Sincerely,

Paul S. Caselton
Deputy General Counsel – Income Tax